FERDINAND ANGELES, PETITIONER, VS. HON. MARCELINO L. SAYO, JR. PRESIDING JUDGE, BRANCH 45, REGIONAL TRIAL COURT, MANILA AND FLORENCIO F. ALIASAS, RESPONDENTS.

Ponente: BATO, JR., J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/9f0e6730244a/

BATO, JR., J.:

This is a Petition for Certiorari with Prayer for Temporary Restraining Order seeking to annul and set aside the Orders dated 4 October 2010 and 10 April 2014 issued by public respondent Judge Marcelino L. Sayo, Jr. ("respondent Judge") in Civil Case No. 10-122771.

The instant case stemmed from a Complaint for Ejectment filed by private respondent Florencio F. Aliasas ("Aliasas") against petitioner Ferdinand Angeles ("Angeles") before the Metropolitan Trial Court of Manila (MeTC) which was dismissed by the latter in its Decision dated 7 December 2009.

However, on appeal, Aliasas failed to timely file his Memorandum of Appeal, thus he filed a Motion with Leave of Court to Admit and Give Due Course to Memorandum of Appeal on 3 June 2010. After Angeles filed his opposition on the motion, on 4 October 2010, respondent Judge issued an Order granting Aliasas' motion, viz.:

> "x x x
>
> In the higher interest of justice and that this case be decided on the merits and not on mere technicalities, the subject Motion is hereby GRANTED.
>
> ACCORDINGLY, the plaintiff-appellant's Motion With Leave of Court to Admit And Give Due Course to Memorandum On Appeal is hereby GRANTED and the attached Memorandum for Appellant dated March 5, 2010 is hereby Admitted.
>
> The defendant-appel[l]ee is given fifteen (15) days from receipt of copy of this Order to file his appeal memorandum.
>
> SO ORDERED."[1]

Aggrieved, Angeles filed a Motion for Reconsideration on 5 December 2013 which was denied by respondent Judge in its Order[2] dated 10 April 2014. The said Order was received by Angeles on 6 August 2012. Hence, the present recourse of Angeles which was filed on 8 October 2014.

The instant petition must fail.

At the outset, it is noteworthy that Section 11 of Rule 13 of the 1997 Rules on Civil Procedure mandates strict compliance in the priorities in the modes of filing and service of pleadings and other papers. It explicitly provides –

> "Section 11. Priorities in modes of service and filing.– Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done

> personally. A violation of this Rule may be cause to consider the paper as not filed."

Also, Rule 65 explicitly provides for the requirements in filing a petition for certiorari, viz.:

> "Section 1. Petition for certiorari. – x x x a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the paragraph of Section 3, Rule 46." [Emphasis supplied]
>
> "Section 4. When and where petition filed. – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion. x x x" [Emphasis supplied]

Section 3 of Rule 46 provides:

> "Section 3. Contents and filing of petition; effect of non-compliance with requirements. – The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.
>
> x x x x x x x x x
>
> It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. x x x
>
> The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid court and other tribunal or agency thereof within five (5) days therefrom.
>
> x x x x x x x x x
>
> The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for dismissal of the petition."[3] [Emphasis supplied]

A careful evaluation of the rollo of this case reveals that petitioner violated the above-quoted rules.

First. The petition lacks the required explanation why its filing and service was not done personally. Thus, the same may be considered as not filed before this Court nor served to the respondents. Pursuant to Section 11, Rule 13 of the Rules of Court, service and filing of pleadings and other papers must, whenever practicable, be done personally; and if made through other modes, the party concerned must provide a written explanation as to why the service or filing was not done personally.[4] In Solar Team Entertainment, Inc. vs. Hon. Helen Bautista Ricafort, et al.,[5] the Supreme Court declared that strict compliance with Section 11 of Rule 13 is mandatory for the following reasons, viz.:

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

> "Personal service and filing are preferred for obvious reasons. Plainly, such should expedite action or resolution on a pleading, motion or other paper; and conversely, minimize, if not eliminate, delays likely to be incurred if service or filing is done by mail, considering the inefficiency of the postal service. Likewise, personal service will do away with the practice of some lawyers who, wanting to appear clever, resort to the following less than ethical practices: (1) serving or filing pleadings by mail to catch opposing counsel off-guard, thus leaving the latter with little or no time to prepare, for instance, responsive pleadings or an opposition; or (2) upon receiving notice from the post office that the registered parcel containing the pleading of or other paper from the adverse party may be claimed, unduly procrastinating before claiming the parcel, or, worse, not claiming it at all, thereby causing undue delay in the disposition of such pleading or other papers.
>
> If only to underscore the mandatory nature of this innovation to our set of adjective rules requiring personal service whenever practicable, Section 11 of Rule 13 then gives the court the discretion to consider a pleading or paper as not filed if the other modes of service or filing were resorted to and no written explanation was made as to why personal service was not done in the first place. The exercise of discretion must, necessarily, consider the practicability of personal service, for Section 11 itself begins with the clause 'whenever practicable.'" [Emphasis supplied]

Second. Angeles failed to attach copies of the pleadings and documents filed before the MeTC. He failed to append to the petition copies of the complaint and other pleadings for ejectment and the Decision dated 7 December 2009 of the MeTC, as alleged in the petition.

As stated in Atillo vs. Bombay,[6] the purpose of requiring the submission of pleadings and documents relevant and pertinent to the petition is to enable this Court to determine at the earliest possible time the existence of prima facie merit in the petition. Thus, a petition lacking copies of the essential pleadings, orders of the lower court and portions of the case record may be dismissed.[7]

Third. The instant petition is filed out of time. Angeles clearly alleged in his petition that he received the Order denying his motion for reconsideration on 6 August 2014. As such, 5 October 2014 is the expiration of the reglementary period of 60 days within which to the file the petition. However, 5 October 2014 is a Sunday and 6 October 2014 was a holiday. Hence, Angeles should have filed his petition for certiorari on 7 October 2014 and not on 8 October 2014.

It must be emphasized that the right to appeal is neither a natural right nor a part of due process. It is merely a procedural remedy of statutory origin and may be exercised only in the manner prescribed by the provisions of law authorizing its exercise.[8] A writ of certiorari is a prerogative writ, never demandable as a matter of right, never issued except in the exercise of judicial discretion. Hence, he who seeks a writ of certiorari must apply for it only in the manner and strictly in accordance with the provisions of the law and the Rules.[9]

At any rate, even if We ignore the aforementioned procedural infirmities in the interest of substantial justice, the petition would still fail.

Well settled is the rule that a petition for certiorari, under Rule 65, is a remedy narrow in scope and inflexible in character. It is not a general utility tool in the legal workshop. It offers only a limited form of review whose principal function is to keep an inferior tribunal within its jurisdiction. It can be invoked only for an error of jurisdiction, i.e., one where the act complained of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or in excess of jurisdiction, not to be used for any other purpose, such as to cure errors in proceedings or to correct erroneous conclusions of law or fact.[10]

For a petition for certiorari to prosper, the essential requisites that have to concur are: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or

officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[11] The phrase "without jurisdiction" means that the court acted with absolute lack of authority or want of legal power, right or authority to hear and determine a cause or causes, considered either in general or with reference to a particular matter. It means lack of power to exercise authority.[12] "Excess of jurisdiction" occurs when the court transcends its power or acts without any statutory authority; or results when an act, though within the general power of a tribunal, board or officer (to do) is not authorized, and invalid with respect to the particular proceeding, because the conditions which alone authorize the exercise of the general power in respect of it are wanting.[13] While that of "grave abuse of discretion" implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; simply put, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.[14]

In the case at bar, the second requisite for a petition for certiorari is wanting. Angeles failed to clearly demonstrate that respondent Judge acted without or in excess of his jurisdiction or with grave abuse of discretion when it allowed Aliasas to file his Memorandum of Appeal even after the lapse of the period within which to file the same. In Honofre Fuentes vs. Felomino Caguimbal,[15] the Supreme Court categorically declared that it will not interfere with a Regional Trial Court's non-dismissal of an appeal due to appellant's failure to file his memorandum of appeal. The Supreme Court ratiocinated –

> "As regards the RTC's non-dismissal of respondent's appeal due to his failure to file his memorandum appeal on time, the Court will not interfere with the RTC's exercise of its discretion.
>
> True, Rule 40, Section 7(b) provides that 'it shall be the duty of the appellant to submit a memorandum' and failure to do so 'shall be a ground for dismissal of the appeal'; and that said provision uses the word 'shall', which expresses a mandatory or compulsory duty to submit a memorandum. Nevertheless, it has also been held that the word 'shall' does not always denote an imperative duty. It may also be consistent with an exercise of discretion. In this jurisdiction, the tendency has been to interpret 'shall' as the context or a reasonable construction of the statute in which it is used demands or requires. Inasmuch as the RTC already absolved respondent of his tardy filing of the memorandum appeal, then the Court will not substitute its judgment with that of the RTC's.
>
> It cannot be said that petitioner was deprived of due process when he was not able to file his own memorandum, for as borne by the records, petitioner was able to ventilate his side anent the correctness of the RTC Decision from the CA up to this Court. The essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to seek a reconsideration of the action or ruling complained of. Due process is satisfied when the parties are afforded fair and reasonable opportunity to explain their side of the controversy or an opportunity to move for a reconsideration of the action or ruling complained of."

Verily, under the circumstances prevailing in this case, this Court opts not to exercise its discretionary appellate jurisdiction to entertain the petition.

WHEREFORE, for being procedurally infirmed and patently without merit, the instant petition for certiorari is hereby DENIED DUE COURSE and DISMISSED outright.

The above-entitled case is now considered CLOSED and TERMINATED.

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

SO ORDERED.

Zalameda, and Diy, JJ., concur.

---

[1] Order dated 4 October 2010, Rollo, p.13.

[2] Rollo, p. 17.

[3] Section 3, Rule 46, 1997 Revised of Civil Procedure.

[4] Rogelio Aberca, et al. vs. Maj. Gen. Fabian Ver, et al., G.R. No. 166216, 14 March 2012.

[5] G.R. No. 132007, 5 August 1998.

[6] 351 SCRA 361-372.

[7] Air Philippines Corporation vs. Zamora, G.R. No. 148247, 7 August 2006 citing Russel, Rizza, Katherine, Lyra, Ruth, all surnamed de los Santos vs. Court of Appeals, G.R. No. 147912, 26 April 2006.

[8] Neplum vs. Orbeso, G.R. No. 141986, 11 July 2002.

[9] NYK International Knitwear Corp., Philippines vs. NLRC, G.R. No. 146267, 17 February 2003.

[10] Heirs of Bertuldo Hinog vs. Hon. Achilles Melicor, et al., G.R. No. 140954, 12 April 2005.

[11] Afredo Tagle vs. Equitable PCI Bank (Formerly Philippine Commercial International Bank) and the Honorable Herminia V. Pasamba, Acting Presiding Judge, Regional Trial Court-Branch 82, City of Malolos, Bulacan, G.R. No. 172299, 22 April 2008.

[12] Ibid.

[13] Ibid.

[14] Ibid.

[15] G.R. No. 150305, 22 November 2007.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.